



TOWN OF FAIRFAX

STAFF REPORT

March 4, 2020

TO: Mayor and Town Council

FROM: Garrett Toy, Town Manager

SUBJECT: Introduce and read by title only an Ordinance amending Chapter 8.20 of the Fairfax Municipal Code "Noise Control" to regulate the use of back-up, emergency generators during prolonged power outages; CEQA exempt per CEQA Guidelines Section 15269c

RECOMMENDATION

Introduce and read by title only:

"An Ordinance of the Town Council of the Town of Fairfax Amending and Restating Section 8.20.070 ("Exemptions") of Chapter 8.20 ("Noise Control") of the Fairfax Municipal Code to Regulate the Use of Backup, Emergency Generators During Prolonged Power Outages."

BACKGROUND

With the advent of the PG&E Public Safety Power Shutoff (PSPS) program, communities have had to adapt to prolonged power outages. Last October, Fairfax residents and businesses experienced a power shutoff that lasted for 4 days. During the PSPS, some residents used portable (as opposed to permanent) generators. Current Town Code does not address the use of portable generators during prolonged power shut offs caused by emergencies or PSPS events. Since the PSPS, more residents have installed permanent generators to use when the electricity goes out. Currently, permanent generator installations must comply with applicable building and planning codes. Portable generators do not require any permits.

DISCUSSION

At its February 5th meeting, the Council indicated they would like to allow more time for community input and, after a discussion regarding hours of operation and noise levels, continued the matter to this meeting. The proposed ordinance would amend the Town Code to address the use of generators during an emergency. In essence, the amendment would allow the use of permanent and portable generators under certain conditions, such as a PSPS. Staff modeled this amendment after Mill Valley's requirement, with provisions added from the San Rafael ordinance.

For ease of use, we included all the provisions in the Exemption Section (8.20.070) of the Noise Control Chapter 8.20. Specifically, we included the following key provisions:

- Generators for commercial uses may be operational 24 hours per day, but should be shut off when not critically needed, to minimize the disturbance of neighbors.
- Generators supporting residential uses shall not be operated between the hours of 11:45 p.m. and 5:00 a.m., except as required for a bonafide health or medical need.
- Testing of emergency generators shall be limited to the hours between 9:00 a.m. and 8:00 p.m.
- Portable generator means any UL listed diesel or gas fired generator not connected to a structure's electrical system and intended to provide power only during emergencies or utility power outages.
- Portable generators must not exceed 69dBa when measured at the property line during full speed diagnostics and normal operations with no load and must be a minimum of 10 feet from the property line or placed in an area that is reasonably practical for the homeowner that is least disruptive to neighbors. This last provision recognizes that some parcels may not be able to meet the 10-foot set back requirement for a portable generator.

The above provisions attempt to balance the use of generators during prolonged power outages to meet refrigeration, medical, and/or health needs of residents against the impact on neighbors of the noise created by generators.

Attached for clarity is an excerpt of the Town Code in redline showing the new provisions as well as the reformatting of Section 8.20.070.

On-Line Survey Results

In an effort to solicit more community input, staff developed an online survey. Attached is a survey report as of Thursday (2/27) evening. The report is a summary of all 267 responses which includes both registered (155) and unregistered responses (112). Registered means a person entered their address and email. Unregistered means a person declined to list their address and email which means he/she could submit multiple responses and we do not know if they are a resident or not. Of the 155 registered responses, 148 (95%) are located in Fairfax. The responses were fairly similar between registered and unregistered responses and, thus, we included one summary of all combined responses. Of the 267 responses, 87 persons provided additional comments which can be viewed online in the survey summary.

Overall, 53.8% responses indicate the Town should regulate the use of permanent and portable emergency generators. If the Town does choose to adopt regulations, 60% indicated support for limiting the hours of operation with 46.2% supporting a "turn-off" time of 9:00pm or earlier and 60.9% supporting a "turn-on" time of 7:00am or later. Approximately 46.6% thought the Town should consider additional exceptions for residential generator uses, besides health and medical reasons. Approximately 54.9% supported the Town setting a maximum 69 dbA noise level for generators. An additional 4.7% supported setting a limit, but preferred a lower dbA level. Over two-thirds of responses (69.6%) supported exceptions for commercial uses.

It should be noted that that survey is intended to solicit community input and is not meant to be statistically significant. While the survey currently does not have an expiration date, we anticipate setting a closing date in late March prior to the April Council meeting. As a result,

the Council may choose to introduce the ordinance tonight with revisions or continue the matter to the April meeting to consider the final survey results. It should be noted that the Council may make additional modifications to the ordinance during the second reading. Should that be the case, the second reading becomes the first reading/introduction of the ordinance.

CEQA

This Ordinance is exempt from the California Environmental Quality Act (“CEQA”) since it is an emergency project under the California Environmental Quality Act (CEQA) Guidelines Section 15269c, which applies to specific, short-term actions or activities that are undertaken or deemed necessary to prevent or mitigate an emergency.

FISCAL IMPACT

N/A

ATTACHMENTS

- A. Proposed Ordinance
- B. Excerpt of the Town Code (redline)
- C. Survey Summary